

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

UNITED STATES OF AMERICA                     )  
   )  
   ) v. CASE NO. 2:08-CR-225-WKW  
   )  
LEE ALLEN CLAIBORNE                     )

**ORDER**

This case is before the court on Defendant Lee Allen Claiborne's ("Mr.Claiborne") Unopposed Motion to Continue Trial (Doc. # 18). The trial is currently set for the trial term of court beginning March 16, 2009. For the reasons set forth below, the court finds that the trial should be continued pursuant to 18 U.S.C. § 3161(h).

While the grant of a continuance is left to the sound discretion of the trial judge, *United States v. Stitzer*, 785 F.2d 1506, 1516 (11th Cir. 1986), the court is limited by the requirements of the Speedy Trial Act, 18 U.S.C. § 3161. The Act provides in part:

In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs.

18 U.S.C. § 3161(c)(1). However, the Act excludes from the 70 day period "delay resulting from a continuance granted by any judge . . . at the request of the defendant or his counsel, if the judge granted such continuance on the basis of his findings that the ends of justice served . . . outweigh the best interest of the public and the defendant in a speedy trial" § 3161(h)(8)(A).

In support of his motion, Mr. Claiborne states that “counsel was assigned to represent [him] on January 12, 2009, [and] . . . will not have an opportunity to obtain all mental health and physical health records [for Mr. Claiborne] before the presently scheduled trial date.” (Doc. # 18 ¶¶ 2 & 4.) Mr. Claiborne also notifies the court that the United States does not oppose the continuance. (Doc. # 18 ¶ 5.)

In light of these facts, the court finds that failure to grant the motion for continuance would “deny counsel of the defendant . . . the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.” § 3161(h)(8)(A); § 3161(h)(8)(B)(i & iv). For this reason, the court finds it is in the interest of justice to allow Mr. Claiborne’s counsel more time to conduct pretrial investigation and advise his client.

Accordingly, it is ORDERED that the Unopposed Motion to Continue Trial (Doc. # 18) filed by Mr. Claiborne is GRANTED and that the trial of this case is continued from March 16, 2009, to the criminal term of court beginning June 22, 2009.

DONE this 21st day of January, 2009.

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/s/ W. Keith Watkins  
UNITED STATES DISTRICT JUDGE